

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

IN RE PORK ANTITRUST
LITIGATION

Case No. 0:18-cv-01776-JRT-HB

**DECLARATION OF ERIC
SCHACHTER IN SUPPORT OF
PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF SETTLEMENT**

This Document Relates to:

All Consumer Indirect Purchaser Actions

I, Eric Schachter, hereby declare as follows:

1. I am a Senior Vice President with A.B. Data, Ltd. ("A.B. Data"). I am fully familiar with the facts contained herein based upon my personal knowledge, and if called as a witness, could and would testify competently thereto. I submit this declaration at the request of Co-Lead Counsel in connection with the above-captioned action (the "Action").

2. As detailed in my previous Declaration of Eric Schachter in Support of Plaintiffs' Motion to Approve the Manner of Notice and Form of Class Notice Regarding Settlement with Smithfield Foods Company dated September 27, 2022 (ECF No. 1517) (the "Declaration of Eric Schachter in Support of Plaintiffs' Motion for Preliminary Approval of the Class Action Settlement between Consumer Indirect Purchaser Plaintiffs and Defendant Smithfield Foods, Inc. and to direct notice to the Settlement Class") and pursuant to the Court's Order Granting Preliminary Approval of the Class Action

Settlement Agreement between Consumer Indirect Purchaser Plaintiffs and Defendant Smithfield Foods, Inc. (ECF No. 1588) dated November 9, 2022 (the “Notice Order”), A.B. Data was responsible for implementing the Court-approved Notice Plan. The Notice Plan was designed to provide notice to potential Settlement Class Members. The Settlement Class is defined as follows:

All persons and entities who indirectly purchased Pork from any of the Defendants or any co-conspirator, or their respective subsidiaries or affiliates, for personal use in the United States from January 1, 2009, through April 2, 2021. Specifically excluded from the Settlement Class are the Defendants; the officers, directors, or employees of any Defendant; any entity in which any Defendant has a controlling interest; and any affiliate, legal representative, heir, or assign of any Defendant. Also excluded from this Settlement Class are any federal, state, or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action.

3. As detailed in the Preliminary Approval Declaration, the Notice Plan featured a combination of: i) direct email notice to potential Settlement Class Members; ii) a digital advertising campaign on numerous digital and social media platforms; iii) a news release disseminated via *PR Newswire*; iv) a toll-free telephone number and case-specific website to address potential Settlement Class Member inquiries, and v) earned media to deliver notice to potential members of the Settlement Class to inform them of their rights and options.

Direct Notice

4. As detailed in the Preliminary Approval Declaration for the JBS Settlement, A.B. Data had already obtained from Co-Lead Counsel some contact information for potential Settlement Class Members provided by third parties that had

been subpoenaed. Prior to initiating the notice portion of this campaign, A.B. Data received additional contact information for potential Settlement Class Members provided by third parties that had been subpoenaed. A.B. Data electronically processed all potential Settlement Class Member contact information to consolidate both lists of potential Settlement Class Members, remove duplicate records, and ultimately load all unique potential Settlement Class Member names and contact information into our secure notice database for purposes of providing notice.

5. On December 9, 2022, A.B. Data began to send the Court-approved Notice by email to potential Settlement Class Members with a known email address. To maximize deliverability, A.B. Data implemented several best practices such as ensuring no inclusion of words or phrases known to trigger SPAM or junk filters, not including attachments to the emails, and sending the emails in tranches over a period of days. In total, A.B. Data sent the Email Notice to 27,551,906 unique email addresses, of which 17,560,555 were successfully delivered. A true and correct copy of the Email Notice is attached as **Exhibit A**.

Digital Media

6. To supplement direct notice efforts, beginning on December 9, 2022, A.B. Data caused digital banner and newsfeed ads to appear on various websites and social media platforms. The Notice Plan required approximately 348,000,000 impressions be delivered. A.B. Data delivered a total of 421,314,574 impressions resulting in 73,314,574 more impressions than called for in the Court-approved Notice Plan, resulting in engagements and/or conversions across Google Display Network, Google AdWords,

Facebook, Instagram, and YouTube. A case-specific Facebook page was also created as a landing page for the links in the Facebook and Instagram newsfeed ads. A sampling of the digital banner and newsfeed ads are attached as **Exhibit B**.

Earned Media

7. On December 9, 2022, A.B. Data caused the Notice to be disseminated as a news release via *PR Newswire*'s US1 Newswire distribution list. This news release was distributed via *PR Newswire* to the news desks of approximately 10,000 newsrooms, including those of print, broadcast, and digital websites across the United States. The news release was also translated and published to *PR Newswire*'s U.S. Hispanic media contacts and Hispanic news websites. True and accurate copies are attached as **Exhibit C**.

Website and Telephone

8. To assist potential Settlement Class Members in understanding the terms of the Settlement and their rights, A.B. Data updated the previously established case-specific toll-free telephone number (877-777-9594) and case-specific website (www.overchargedforpork.com).

9. On July 22, 2021, A.B. Data established a case-specific toll-free telephone number (877-777-9594), with an interactive voice response ("IVR") system in both English and Spanish languages. Prior to the dissemination of Notice on December 9, 2022, A.B. Data updated the IVR to coincide with the Smithfield notice. The toll-free number appeared on the Email Notice, Long-Form Notice, and *PR Newswire*. The automated interactive voice response system provides callers with a series of choices to

hear prerecorded information concerning the Settlement. Callers also have the option to speak to a live operator during business hours.

10. On July 22, 2021, A.B. Data established a case-specific website, www.overchargedforpork.com. Prior to the dissemination of Notice on December 9, 2022, A.B. Data updated the website to coincide with the Smithfield notice. The website address appeared on the Email Notice, Long-Form Notice, and *PR Newswire*. The website includes case-specific information, including relevant deadlines and downloadable versions of the Complaint, Settlement Agreement, Notice, and other relevant documents. The website also includes functionality for Settlement Class Members to submit an online claim. To date, the website has 768,492 hits from its inception through February 28, 2023, and 325,372 hits from December 9, 2022 (the start of the Smithfield Settlement noticing), through February 28, 2023.

11. On or about January 24, 2023, A.B. Data posted the Consumer Indirect Purchaser Plaintiffs' Motion for an Award of Attorneys' Fees and Expenses and associated documents to the website.

Requests for Exclusion and Objections

12. The Notice provides that Settlement Class Members may request exclusion by sending a written request to the Settlement Administrator that was postmarked by February 7, 2023. As of the date of this declaration, A.B. Data has received 3 prior requests for exclusion from the JBS Settlement Class and no exclusions for this matter.

13. The deadline to object to the Smithfield Settlement was February 7, 2023. The Notice informed Settlement Class Members that any objections were to be mailed to

the Settlement Administrator, Indirect Purchaser Plaintiffs' Co-Lead Counsel, and Counsel for JBS. As of the date of this declaration, A.B. Data has received no objections.

Conclusion

14. It is my opinion, based on my individual expertise and experience and that of my A.B. Data colleagues, that the Notice Plan effectively reached an estimated 83.1% of the target audience and thus potential Settlement Class Members, delivered plain language notices designed to capture potential Settlement Class Members' attention, and provided them with the information in an informative and easy to understand manner that is necessary to effectively understand their rights and options.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 15th day of March 2023 in Milwaukee, Wisconsin.

A handwritten signature in dark ink, appearing to read 'Eric Schachter', is written over a horizontal line.

ERIC SCHACHTER

EXHIBIT A

From: Pork Indirect Purchaser Settlement Administrator <notice@abdataclassactionmail.com>
Sent: Friday, December 9, 2022 3:14 PM
To: [REDACTED]
Subject: [REDACTED] Notice of Settlement for Consumers Who Purchased Pork Products

EXTERNAL SENDER

Please do not reply to this email, this inbox is unmonitored.

COURT-APPROVED LEGAL NOTICE

If you purchased any Pork product in the United States from January 1, 2009, through April 2, 2021, a class action settlement may affect your rights.

*Para una notificacion in español, llame gratis al 1-877-777-9594
o visite nuestro website www.overchargedforpork.com.*

A new settlement has been reached in a class action antitrust lawsuit filed on behalf of Indirect Purchaser Plaintiffs with Defendant Smithfield Foods, Inc. and related or affiliated entities ("Smithfield"). This Court-ordered notice may affect your rights. Please review and follow the instructions carefully.

The United States District Court for the District of Minnesota authorized this notice. Before any money is paid, the Court will hold a hearing to decide whether to approve the Settlement.

WHO IS INCLUDED?

For settlement purposes, members of the Settlement Class are defined as all persons and entities who indirectly purchased Pork from any of the Defendants or any co-conspirator, or their respective subsidiaries or affiliates, for personal use in the United States from at least as early as January 1, 2009 until April 2, 2021. Specifically excluded from the Settlement Class are the Defendants; the officers, directors, or employees of any Defendant; any entity in which any Defendant has a controlling

interest; and any affiliate, legal representative, heir, or assign of any Defendant. Also excluded from this Settlement Class are any federal, state, or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action. In addition to Smithfield, the Defendants in this lawsuit for purposes of this notice include Clemens Food Group, LLC, The Clemens Family Corporation, Hormel Foods Corporation, JBS USA Food Company, JBS USA Food Company Holdings, Seaboard Foods LLC, Triumph Foods, LLC, Tyson Foods, Inc., Tyson Prepared Foods, Inc., Tyson Fresh Meats, Inc., and Agri Stats, Inc.

If you are not sure you are included, you can get more information, including a detailed notice, at www.overchargedforpork.com or by calling toll-free 1-877-777-9594.

WHAT IS THIS LAWSUIT ABOUT?

Indirect Purchaser Plaintiffs allege that Defendants and their co-conspirators conspired and combined to fix, raise, maintain, and stabilize the price of Pork, at least as early as January 1, 2009, with the intent and expected result of increasing prices of Pork in the United States, in violation of federal and state consumer-protection and antitrust laws. Indirect Purchaser Plaintiffs previously reached a settlement with one Defendant, JBS. The Court granted final approval to the JBS settlement on September 14, 2022. Indirect Purchaser Plaintiffs have now reached a new proposed Settlement with Defendant Smithfield. Smithfield denies it did anything wrong. The Court did not decide which side was right, but both sides agreed to the Settlement Agreement to resolve the case, avoid the risks involved with continued litigation, and get benefits to the Settlement Class. The case is still proceeding on behalf of the Indirect Purchaser Plaintiffs against other Defendants who may be subject to separate settlements, judgments, or class certification orders.

WHAT DOES THE SETTLEMENT PROVIDE?

Under the terms of the Settlement Agreement, Smithfield will pay \$75,000,000 to resolve all Settlement Class claims against it in this litigation. In addition to this

monetary benefit, Smithfield has also agreed to certain injunctive relief and to provide specified cooperation in the Indirect Purchaser Plaintiffs' continued prosecution of the litigation. No money will be distributed yet. Co-Lead Counsel will continue to pursue the lawsuit against the other non-settling Defendants. Co-Lead Counsel may request that the Court award attorneys' fees and permit the reimbursement of certain litigation costs and expenses. If such request is made, it will be filed at least fourteen days before the objection deadline and posted on the website www.overchargedforpork.com at that time. Co-Lead Counsel believes that the total amount of attorneys' fees sought will be no more than 33.3% of the Settlement Fund or \$25,000,000.00, and the total amount of costs sought will be no more than \$5.2 million. Class Counsel will request service awards of up to \$2,000 on behalf of each Class Representative. All Settlement funds that remain after payment of the Court-ordered attorneys' fees, costs, service awards, and expenses will be distributed at the conclusion of the lawsuit or as ordered by the Court.

WHAT ARE YOUR RIGHTS AND OPTIONS?

You do not need to take any action to remain a member of the Settlement Class and be bound by the Settlement Agreement. As a Settlement Class Member, you may be able to participate in (or exclude yourself from) any future settlement or judgment obtained by Indirect Purchaser Plaintiffs against other Defendants in the case. If you do not want to be legally bound by the Settlement Agreement, you must exclude yourself by **February 7, 2023**, or you will not be able to sue or continue to sue Smithfield for the Released Claims (as defined in the Settlement Agreement). If you exclude yourself, you can't get money from the Settlement. If you don't exclude yourself from the Settlement Class, you may still object to the Settlement Agreement by **February 7, 2023**. The detailed notice explains how to exclude yourself or object. Details may also be found on the FAQs page of the Settlement website. The Court will hold a hearing in this case (In re Pork Antitrust Litigation (Indirect Purchaser Actions), Case No. 0:18-cv-01776 (D. Minn.)), on **March 30, 2023**, to consider whether to approve the Settlement Agreement. You may ask to speak at the hearing, but you do not have to.

In order to be eligible to receive a payment from the Settlement, you must submit a valid Claim Form before June 30, 2023. You may submit a Claim Form either online or by mail. Both options are available at the website www.overchargedforpork.com. If you previously submitted a Claim Form in response to the JBS settlement notice, then you do not need to submit another Claim Form as you will be automatically eligible to receive a payment from the Smithfield Settlement.

Deadlines and the date and time of the hearing are subject to change. Updates will be provided on the website www.overchargedforpork.com.

This notice is only a summary. You can find more details about the Settlement at www.overchargedforpork.com or by calling toll-free 1-877-777-9594. Please do not contact the Court.

Pork Indirect Purchaser Litigation
c/o A.B. Data, Ltd.
P.O. Box 173137
Milwaukee, WI 53217

[Unsubscribe](#) - [Unsubscribe Preferences](#)